

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MONET CARTER-MIXON, et al.,

Plaintiffs,

v.

CITY OF TACOMA, et al.,

Defendants.

CASE NO. 3:21-cv-05692-LK

ORDER GRANTING STIPULATED
MOTION TO STAY

This matter comes before the Court on the parties' stipulated motion to stay this case until the criminal case against several of the individual defendants has been resolved. Dkt. No. 81. For the reasons set forth below, the Court grants the motion and stays this case.

I. BACKGROUND

Manuel Ellis died while law enforcement officers attempted to arrest him on March 3, 2020. Dkt. No. 22 at 7, 12–13. His family and estate have sued the City of Tacoma, Tacoma Police Officers (including Christopher Burbank, Matthew Collins, and Timothy Rankine), Pierce County, and Pierce County Sheriff Deputies, alleging among other things that the defendant police officers'

1 and sheriff deputies' excessive force against Mr. Ellis violated his constitutional rights and caused
2 his death. *Id.* at 1–6, 24–29.

3 The State of Washington is prosecuting Officers Collins and Burbank for murder and
4 Officer Rankine for manslaughter for their actions on March 3, 2020. Dkt. No. 81 at 2. The cases
5 have been consolidated and the estimated 10-week trial is scheduled to begin on September 18,
6 2023 in Pierce County Superior Court. Dkt. No. 82 at 2; Dkt. No. 82-1 at 2.

7 II. DISCUSSION

8 The parties argue that a stay is warranted because (1) the criminal prosecution involves the
9 same incident—Mr. Ellis's March 3, 2020 death—at issue in this case, (2) the Washington
10 Attorney General has declined to grant the other defendant officers (Ford, Komarovskiy, and
11 Farinas) immunity from future prosecution for their involvement in the incident, (3) “the *Monell*
12 claim against the City of Tacoma will turn in large part on the claims against the defendant
13 officers,” and (4) the officers' likely invocation of their Fifth Amendment rights during their
14 depositions “may expose the defendant officers to an adverse inference and also interferes with
15 the Plaintiffs' ability to obtain otherwise discoverable information[.]” Dkt. No. 81 at 1–2.

16 “Absent a showing of substantial prejudice to the rights of the parties involved, the
17 Constitution does not require a stay of civil proceedings pending the outcome of criminal
18 proceedings.” *S.E.C. v. Glob. Express Cap. Real Est. Inv. Fund, I, LLC*, 289 F. App'x 183, 190
19 (9th Cir. 2008). Instead, courts “must consider the particular circumstances and competing
20 interests involved, and should consider” the following factors:

21 (1) the extent to which the defendant's Fifth Amendment rights are implicated,
22 (2) the interest of the plaintiffs in proceeding expeditiously, (3) the burden the
23 proceedings may impose on the defendants, (4) the convenience of the court and
24 the efficient use of judicial resources, (5) the interests of persons not parties to the
civil litigation, and (6) the interest of the public in the pending civil and criminal
litigation.

1 *Id.* at 191 (citing *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324–25 (9th Cir. 1995)).

2 Although the justification for staying civil proceedings “is weak when no indictment has
3 been returned,” *id.*, an information has been filed against Officers Collins, Burbank, and Rankine.
4 *See State v. Rankine*, No. 21-1-01288-2, Dkt. No. 1 (Pierce Cnty. Super. Ct. May 27, 2021); *State*
5 *v. Burbank*, No. 21-1-01286-6, Dkt. No. 1 (Pierce Cnty. Super. Ct. May 27, 2021); *State v. Collins*,
6 No. 21-1-01287-4, Dkt. No. 1 (Pierce Cnty. Super. Ct. May 27, 2021); Wash. Super. Ct. CrR 2.1(a)
7 (“The initial pleading by the State shall be an indictment or an information in all criminal
8 proceedings filed by the prosecuting attorney.”); *Gaines v. State of Washington*, 277 U.S. 81, 86
9 (1928) (“Prosecution by information instead of by indictment is provided for by the laws of
10 Washington.”).

11 The first factor weighs in favor of a stay because this case implicates the officers’ Fifth
12 Amendment rights. Plaintiffs have not yet deposed the officers but anticipate that when they do,
13 they will delve into the same facts that underlie the criminal charges, including “each defendant
14 officer’s involvement in the incident, . . . details of their contact with Mr. Ellis, their justifications
15 for each action they took with respect to Mr. Ellis, and their observations, perceptions, and
16 decision-making during the incident.” Dkt. No. 81 at 3. If the criminal charges are still pending
17 when those depositions occur, the officers will face “a Catch-22: they would have to either risk
18 self-incrimination or invoke their Fifth Amendment rights and suffer potential adverse inferences
19 by doing so.” *Id.* at 6. Those risks and the substantial factual overlap between this case and the
20 criminal prosecution favor a stay. *See, e.g., L.C. v. Gilbert*, No. C09-5586-BHS, 2010 WL
21 1641533, at *2 (W.D. Wash. Apr. 21, 2010) (stay warranted where pending civil and criminal
22 actions involved an “overlap of issues and a danger of self-incrimination if Defendant is forced to
23 disclose information, documents, witness information and testimony in the civil action while the
24 criminal proceeding is pending.”).

1 The other factors also favor granting a stay. First, although Plaintiffs have an interest in
2 pursuing their cases expeditiously, they advocate for a stay despite this interest, agreeing with
3 Defendants that the stay will likely streamline discovery and avoid delays resulting from the
4 officers' invocation of their Fifth Amendment rights. Dkt. No. 81 at 6–7; *see also, e.g., Twenty*
5 *First Century Corp. v. LaBianca*, 801 F. Supp. 1007, 1011 (E.D.N.Y 1992). The parties agree that
6 a stay will not impede their ability to identify potential defendants in time to meet any statute of
7 limitations. Dkt. No. 81 at 6–7 (“[T]he deadlines for joining parties and amending pleadings in
8 this matter ha[ve] passed,” and “Plaintiffs have already decided who to name as defendants.”).
9 Second, the officers would be burdened absent a stay by risking self-incrimination or invoking
10 their Fifth Amendment rights with the potential adverse consequences of doing so. *Id.* at 6–8. And
11 the City of Tacoma would also be burdened because, although “it cannot be liable for the Plaintiffs’
12 constitutional claims unless the Plaintiffs establish that an underlying constitutional violation
13 occurred,” Plaintiffs’ version of the facts could go unrefuted if the officers assert their Fifth
14 Amendment rights. *Id.* at 7–8 (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 695 (1978)).

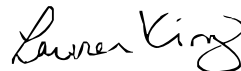
15 Third, a stay will be convenient for the Court and conserve judicial resources because it
16 will allow the Court to avoid ruling on potentially complex discovery issues related to the officers’
17 invocation of the Fifth Amendment and will allow discovery to proceed more efficiently after the
18 stay ends. *See, e.g., L.C.*, 2010 WL 1641533, at *3 (“Staying the case makes efficient use of
19 judicial resources by [e]nsuring that common issues of fact will be resolved and subsequent civil
20 discovery will proceed unobstructed by concerns regarding self-incrimination.”). Fourth, while
21 there is significant public interest in this case, there are no specific non-parties with identifiable
22 interests in this case or in a stay. And the public’s interest in an airing of the facts will be at least
23 partially satisfied by the upcoming criminal trial. Fifth, the public’s interest is furthered by a stay
24 to preserve the integrity of the criminal case. *Id.* (“The public’s interest in the integrity of the

1 criminal case is entitled to precedence over the civil litigant.”); *see also Ochoa v. City of Los*
2 *Angeles*, No. 2:20-CV-06963-AB(AGRx), 2021 WL 6752249, at *5 (C.D. Cal. Dec. 29, 2021)
3 (although “non-parties and the public have a strong interest in the prosecution of the civil matter,”
4 this interest “is overridden by the non-parties and public’s interest in the criminal prosecution of
5 the Officer Defendants.”). In sum, the factors weigh in favor of a stay in light of the specific facts
6 and circumstances present here.

7 III. CONCLUSION

8 For the foregoing reasons, the Court GRANTS the stipulated motion to stay. Dkt. No. 81.
9 This matter is STAYED until the criminal case against the individual defendants has been resolved.
10 Within thirty days of that date, the parties shall file a joint status report regarding the status of that
11 case and proposed dates for the remaining deadlines and trial in this case. Such proposed dates
12 shall be consistent with this Court’s Standing Order. All remaining deadlines are hereby stricken.

13 Dated this 17th day of January, 2023.

14 

15

Lauren King
16 United States District Judge
17
18
19
20
21
22
23
24